

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JOSEPH FREDRICK MANCUSO III,	)	
	)	
Petitioner,	)	
vs.	)	Case No. CIV-09-0991-HE
	)	
MIKE MULLIN, Warden,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, a state prisoner appearing *pro se*, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Bana Roberts who issued her Report and Recommendation, recommending that the petition be dismissed as time barred. The matter is currently before the Court on petitioner's objection to the Report and Recommendation.

Because petitioner has objected to the Report and Recommendation, the matter is reviewed *de novo*. 28 U.S.C. § 636 (b)(1)(C). The petitioner asserts in his objection that, because his constitutional rights have been violated, he cannot be denied habeas relief on the basis that his petition was not timely filed. The law is to the contrary. For substantially the same reasons as stated by the Magistrate Judge, the court concludes that the one-year limitation period applicable to petitioner's claim has expired<sup>1</sup> and that no basis exists for statutory or equitable tolling.


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<sup>1</sup>*Petitioner did not move to withdraw his guilty plea within the ten-day period after pronouncement of his judgment and sentence. As a result, his conviction became final and his one year limitations period began to run on August 17, 2003. Fisher v. Gibson, 262 F.3d 1135, 1142 (10th Cir. 2001).*

Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety and **DISMISSES** the petition as time barred.

**IT IS SO ORDERED.**

Dated this 25th day of January, 2010.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE